

1 HOUSE BILL 1053

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Kathy A. McCoy

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10 AN ACT

11 RELATING TO ELECTIONS; ELIMINATING STATEMENTS OF EXCEPTION FROM
12 THE CAMPAIGN REPORTING ACT; RECONCILING MULTIPLE AMENDMENTS TO
13 THE SAME SECTION OF LAW IN LAWS 1997; AMENDING AND REPEALING
14 SECTIONS OF THE NMSA 1978.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979,
18 Chapter 360, Section 2, as amended) is amended to read:

19 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
20 Act:

21 A. "advertising campaign" means an advertisement or
22 series of advertisements used for a political purpose and
23 disseminated to the public either in print, by radio or
24 television broadcast or by any other electronic means,
25 including telephonic communications, and may include direct or

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1 bulk mailings of printed materials;

2 B. "anonymous contribution" means a contribution
3 the contributor of which is unknown to the candidate or [~~his~~]
4 the candidate's agent or the political committee or its agent
5 who accepts the contribution;

6 C. "bank account" means an account in a financial
7 institution located in New Mexico;

8 D. "campaign committee" means two or more persons
9 authorized by a candidate to raise, collect or expend
10 contributions on the candidate's behalf for the purpose of
11 electing [~~him~~] the candidate to office;

12 E. "candidate" means an individual who seeks or
13 considers an office in an election covered by the Campaign
14 Reporting Act, including a public official, who either has
15 filed a declaration of candidacy or nominating petition or:

16 (1) for a non-statewide office, has received
17 contributions or made expenditures of one thousand dollars
18 (\$1,000) or more or authorized another person or campaign
19 committee to receive contributions or make expenditures of one
20 thousand dollars (\$1,000) or more for the purpose of seeking
21 election to the office; or

22 (2) for a statewide office, has received
23 contributions or made expenditures of two thousand five hundred
24 dollars (\$2,500) or more or authorized another person or
25 campaign committee to receive contributions or make

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1 expenditures of two thousand five hundred dollars (\$2,500) or
2 more for the purpose of seeking election to the office or for
3 candidacy exploration purposes in the years prior to the year
4 of the election;

5 F. "contribution" means a gift, subscription, loan,
6 advance or deposit of money or other thing of value, including
7 the estimated value of an in-kind contribution, that is made or
8 received for a political purpose, including payment of a debt
9 incurred in an election campaign, but does not include the
10 value of services provided without compensation or unreimbursed
11 travel or other personal expenses of individuals who volunteer
12 a portion or all of their time on behalf of a candidate or
13 political committee, nor does it include the administrative or
14 solicitation expenses of a political committee that are paid by
15 an organization that sponsors the committee;

16 G. "deliver" or "delivery" means to deliver by
17 certified or registered mail, telecopier, electronic
18 transmission or facsimile or by personal service;

19 H. "election" means any primary, general or
20 statewide special election in New Mexico and includes county
21 and judicial retention elections but excludes municipal, school
22 board and special district elections;

23 I. "election year" means an even-numbered year in
24 which an election covered by the Campaign Reporting Act is
25 held;

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1 J. "expenditure" means a payment, transfer or
2 distribution or obligation or promise to pay, transfer or
3 distribute any money or other thing of value for a political
4 purpose, including payment of a debt incurred in an election
5 campaign or pre-primary convention, but does not include the
6 administrative or solicitation expenses of a political
7 committee that are paid by an organization that sponsors the
8 committee;

9 K. "person" means an individual or entity;

10 L. "political committee" means two or more persons,
11 other than members of a candidate's immediate family or
12 campaign committee or a husband and wife who make a
13 contribution out of a joint account, who are selected,
14 appointed, chosen, associated, organized or operated primarily
15 for a political purpose; and political committee includes:

16 (1) political action committees or similar
17 organizations composed of employees or members of any
18 corporation, labor organization, trade or professional
19 association or any other similar group that raises, collects,
20 expends or contributes money or any other thing of value for a
21 political purpose;

22 (2) a single individual [~~who by his~~] whose
23 actions [~~represents~~] represent that [~~he~~] the individual is a
24 political committee; and

25 (3) a person or an organization of two or more

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1 persons that within one calendar year expends funds in excess
2 of five hundred dollars (\$500) to conduct an advertising
3 campaign for a political purpose;

4 M. "political purpose" means influencing or
5 attempting to influence an election or pre-primary convention,
6 including a constitutional amendment or other question
7 submitted to the voters;

8 N. "prescribed form" means a form or electronic
9 format prepared and prescribed by the secretary of state;

10 O. "proper filing officer" means either the
11 secretary of state or the county clerk as provided in Section
12 1-19-27 NMSA 1978;

13 P. "public official" means a person elected to an
14 office in an election covered by the Campaign Reporting Act or
15 a person appointed to an office that is subject to an election
16 covered by that act; and

17 Q. "reporting individual" means every public
18 official, candidate or treasurer of a campaign committee and
19 every treasurer of a political committee [and

20 ~~R. "statement of exception" or "statement" means~~
21 ~~the prescribed form subscribed and sworn to by a candidate to~~
22 ~~indicate that the candidate does not intend to raise or expend~~
23 ~~the minimum amount required for the filing of a report of~~
24 ~~expenditures and contributions as provided in Section 1-19-33~~
25 ~~NMSA 1978]."~~

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1 Section 2. Section 1-19-27 NMSA 1978 (being Laws 1979,
2 Chapter 360, Section 3, as amended) is amended to read:

3 "1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

4 A. ~~[Except for those candidates who file a~~
5 ~~statement of exception in an election year pursuant to Section~~
6 ~~1-19-33 NMSA 1978]~~ All reporting individuals shall annually
7 file with the proper filing officer a report of expenditures
8 and contributions on a prescribed form. The report shall be
9 filed on the second Monday in May pursuant to the provisions of
10 Subsection A of Section 1-19-29 NMSA 1978.

11 B. The proper filing officer for filing reports of
12 expenditures and contributions by a political committee is the
13 secretary of state.

14 C. The proper filing officer for filing reports of
15 expenditures and contributions ~~[or statements of exception]~~ is
16 the secretary of state for all public officials.

17 D. The secretary of state shall develop or contract
18 for services to develop an electronic reporting system for
19 receiving and for public inspection of reports of expenditures
20 and contributions ~~[and statements of exception]~~ to the Campaign
21 Reporting Act. The electronic reporting system shall:

22 (1) enable a person to file reports on-line by
23 filling out forms on the secretary of state's web site; and

24 (2) provide for encrypted transmissions."

25 Section 3. Section 1-19-28 NMSA 1978 (being Laws 1979,

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1 Chapter 360, Section 4, as amended) is amended to read:

2 "1-19-28. FURNISHING REPORT FORMS--POLITICAL
3 COMMITTEES--CANDIDATES.--

4 A. The secretary of state annually shall furnish to
5 all reporting individuals the prescribed forms for the
6 reporting of expenditures and contributions, supplemental
7 reports [~~and a statement of exception~~] and the specific dates
8 the reports [~~and statement~~] are due.

9 B. In addition to the provisions of Subsection A of
10 this section, at the time of filing a declaration of candidacy
11 or a nominating petition, the proper filing officer shall give
12 the candidate the prescribed reporting forms and the schedule
13 of specific dates for filing the required reports [~~or a~~
14 ~~statement of exception~~]. The prescribed forms shall also be
15 made available to all reporting individuals at the office of
16 the secretary of state and in each county at the office of the
17 county clerk."

18 Section 4. Section 1-19-29 NMSA 1978 (being Laws 1993,
19 Chapter 46, Section 5, as amended) is amended to read:

20 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

21 A. Annually, all reporting individuals shall file
22 with the proper filing officer by 5:00 p.m. on the second
23 Monday in May a report of all expenditures made and
24 contributions received on or before the first Monday in May and
25 not previously reported. The report shall be filed annually

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1 until the reporting individual's bank account has been closed
2 and the other provisions specified in Subsection [E] D of this
3 section have been satisfied.

4 B. In an election year, in addition to the May
5 report provided for in Subsection A of this section, all
6 reporting individuals, [~~except for persons who file a statement~~
7 ~~of exception pursuant to Section 1-19-33 NMSA 1978 and~~] except
8 for public officials who are not candidates in an election that
9 year, shall file reports of all expenditures made and
10 contributions received according to the following schedule:

11 (1) by 5:00 p.m. on the second Monday in
12 October, a report of all expenditures made and contributions
13 received on or before the first Monday in October and not
14 previously reported;

15 (2) by 5:00 p.m. on the Thursday before a
16 primary, general or statewide special election, a report of all
17 expenditures made and contributions received by 5:00 p.m. on
18 the Tuesday before the election. Any contribution or pledge to
19 contribute that is received after 5:00 p.m. on the Tuesday
20 before the election and that is for five hundred dollars (\$500)
21 or more in a legislative or non-statewide judicial election, or
22 two thousand five hundred dollars (\$2,500) or more in a
23 statewide election, shall be reported to the proper filing
24 officer either in a supplemental report on a prescribed form
25 within twenty-four hours of receipt or in the report to be

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1 filed by 5:00 p.m. on the Thursday before a primary, general or
2 statewide special election, except that any such contribution
3 or pledge to contribute that is received after 5:00 p.m. on the
4 Friday before the election may be reported by 12:00 noon on the
5 Monday before the election; and

6 (3) by 5:00 p.m. on the thirtieth day after a
7 primary, general or statewide special election, a report of all
8 expenditures made and contributions received on or before the
9 twenty-fifth day after the election and not previously
10 reported.

11 C. Notwithstanding the other provisions of this
12 section, the report due on the thirtieth day after an election
13 need be the only report filed after the annual May report if
14 the candidate is not opposed in the election and if the report
15 includes all expenditures made and contributions received for
16 that election and not previously reported.

17 D. A report of expenditures and contributions filed
18 after a deadline set forth in this section shall not be deemed
19 to have been timely filed.

20 E. Each reporting individual shall file a report of
21 expenditures and contributions annually pursuant to the filing
22 schedule set forth in this section, regardless of whether any
23 expenditures were made or contributions were received during
24 the reporting period. Reports shall be required until the
25 reporting individual delivers a report to the proper filing

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1 officer stating that:

2 (1) there are no outstanding campaign debts;

3 (2) all money has been expended in accordance
4 with the provisions of Section 1-19-29.1 NMSA 1978; and

5 (3) the bank account has been closed.

6 F. Each treasurer of a political committee shall
7 file a report of expenditures and contributions annually
8 pursuant to the filing schedule set forth in this section until
9 the treasurer files a report that affirms that the committee
10 has dissolved or no longer exists and that its bank account has
11 been closed.

12 G. A reporting individual who is a candidate within
13 the meaning of the Campaign Reporting Act because of the amount
14 of contributions [~~he~~] the candidate receives or expenditures
15 [~~he~~] the candidate makes and who does not ultimately file a
16 declaration of candidacy or a nominating petition with the
17 proper filing officer shall nevertheless file a report, not
18 later than the second Monday in May for a primary election or
19 the second Monday in October for a general election, of all
20 contributions received and expenditures made on or before the
21 first Monday in May for a primary election or the first Monday
22 in October for a general election and not previously reported.

23 H. Reports required by this section shall be filed
24 electronically by all reporting individuals.

25 I. Reporting individuals may apply to the secretary

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1 of state for exemption from electronic filing in case of
2 hardship, which shall be defined by the secretary of state."

3 Section 5. Section 1-19-32 NMSA 1978 (being Laws 1979,
4 Chapter 360, Section 8, as amended) is amended to read:

5 "1-19-32. INSPECTION OF PUBLIC RECORDS.--

6 A. Each of the following documents is a public
7 record open to public inspection during regular office hours in
8 the office in which the document was filed or from which the
9 document was issued:

10 [~~(1)~~] ~~a statement of exception;~~

11 ~~(2)~~] (1) a report of expenditures and
12 contributions;

13 [~~(3)~~] (2) an advisory opinion issued by the
14 secretary of state;

15 [~~(4)~~] (3) a document specified as a public
16 record in the Campaign Reporting Act; and

17 [~~(5)~~] (4) an arbitration decision issued by an
18 arbitration panel and filed with the secretary of state.

19 B. Each public record described in Subsection A of
20 this section shall be retained by the state for five years and
21 may be destroyed five years after the date of filing unless a
22 legal action or prosecution is pending that requires the
23 preservation of the public record.

24 C. The secretary of state shall provide for
25 electronic access to reports of expenditures and contributions

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1 ~~[and statements of exception]~~ submitted electronically by
2 reporting individuals. Electronic access shall include access
3 via the internet and shall be in an easily searchable format."

4 Section 6. Section 1-19-32.1 NMSA 1978 (being Laws 1981,
5 Chapter 331, Section 9, as amended) is amended to read:

6 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
7 REPORTS.--

8 A. The secretary of state shall conduct a thorough
9 examination of at least ten percent of all reports filed during
10 a year by reporting individuals, selected at random at least
11 forty days after the general election and ten days after the
12 May reports are filed in a nonelection year, to determine
13 compliance with the provisions of the Campaign Reporting Act.
14 The examination may include an investigation of any
15 discrepancies, including a cross-reference to reports filed by
16 any other reporting individual. A reporting individual shall
17 be notified in writing if a discrepancy is found in the report
18 filed and shall be permitted to file a written explanation for
19 the discrepancy within ten working days of the date of the
20 notice. The notice, penalty and arbitration provisions set
21 forth in Section 1-19-34.4 NMSA 1978 shall apply to
22 examinations conducted under this section.

23 B. After the date stated in the notice of final
24 action for submission of a written explanation, the secretary
25 of state shall prepare an annual report of any unresolved

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1 discrepancies found after examination of the random sample
2 provided for in Subsection A of this section. A copy of this
3 report shall be transmitted to the attorney general for
4 enforcement pursuant to the provisions of Section 1-19-36 NMSA
5 1978. This report is a public record open to public inspection
6 and subject to the retention and destruction provisions set
7 forth in Section 1-19-32 NMSA 1978.

8 ~~[G. A county clerk shall deliver to the secretary~~
9 ~~of state, within forty-eight hours of the county clerk's~~
10 ~~receipt, each report of expenditures and contributions or~~
11 ~~statement of exception filed with the county clerk's office.~~
12 ~~Within forty-eight hours of receipt of a report of expenditures~~
13 ~~and contributions or statement of exception filed by a~~
14 ~~legislative candidate for a multicounty district, the secretary~~
15 ~~of state shall deliver to each county clerk in the multicounty~~
16 ~~legislative district a copy of the report or statement filed.]"~~

17 Section 7. Section 1-19-34.4 NMSA 1978 (being Laws 1993,
18 Chapter 46, Section 15, as amended) is amended to read:

19 "1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
20 INVESTIGATIONS--BINDING ARBITRATION--REFERRALS FOR
21 ENFORCEMENT.--

22 A. The secretary of state shall advise and seek to
23 educate all persons required to perform duties under the
24 Campaign Reporting Act of those duties. This includes advising
25 all known reporting individuals at least annually of that act's

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1 deadlines for submitting required reports [~~and statements of~~
2 ~~exception~~]. The secretary of state, in consultation with the
3 attorney general, shall issue advisory opinions, when requested
4 in writing to do so, on matters concerning that act. All
5 prescribed forms prepared shall be clear and easy to complete.

6 B. The secretary of state may initiate
7 investigations to determine whether any provision of the
8 Campaign Reporting Act has been violated. Additionally, any
9 person who believes that a provision of that act has been
10 violated may file a written complaint with the secretary of
11 state any time prior to ninety days after an election, except
12 that no complaints from the public may be filed within eight
13 days prior to an election. The secretary of state shall adopt
14 procedures for issuing advisory opinions and processing
15 complaints and notifications of violations.

16 C. The secretary of state shall at all times seek
17 to ensure voluntary compliance with the provisions of the
18 Campaign Reporting Act. If the secretary of state determines
19 that a provision of that act for which a penalty may be imposed
20 has been violated, the secretary of state shall by written
21 notice set forth the violation and the fine imposed and inform
22 the reporting individual that [~~he~~] the individual has ten
23 working days from the date of the letter to correct the matter
24 and to provide a written explanation, under penalty of perjury,
25 stating any reason why the violation occurred. If a timely

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1 explanation is filed and the secretary of state determines that
2 good cause exists to waive the fine imposed, the secretary of
3 state may by a written notice of final action partially or
4 fully waive any fine imposed for any late, incomplete or false
5 report [~~or statement of exception~~]. A written notice of final
6 action shall be sent by certified mail.

7 D. Upon receipt of the notice of final action, the
8 person against whom the penalty has been imposed may protest
9 the secretary of state's determination, including an advisory
10 opinion, by submitting on a prescribed form a written request
11 for binding arbitration to the secretary of state within ten
12 working days of the date of the notice of final action. Any
13 fine imposed shall be due and payable within ten working days
14 of the date of notice of final action. No additional fine
15 shall accrue pending the issuance of the arbitration decision.
16 Fines paid pursuant to a notice of final action that are
17 subsequently reduced or dismissed shall be reimbursed with
18 interest within ten working days after the filing of the
19 arbitration decision with the secretary of state. Interest on
20 the reduced or dismissed portion of the fine shall be the same
21 as the rate of interest earned by the secretary of state's
22 escrow account to be established by the department of finance
23 and administration.

24 E. An arbitration hearing shall be conducted by a
25 single arbitrator selected within ten days by the person

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1 against whom the penalty has been imposed from a list of five
2 arbitrators provided by the secretary of state. Neither the
3 secretary of state nor a person subject to the Campaign
4 Reporting Act, Lobbyist Regulation Act or Financial Disclosure
5 Act may serve as an arbitrator. Arbitrators shall be
6 considered to be independent contractors, not public officers
7 or employees, and shall not be paid per diem and mileage.

8 F. The arbitrator shall conduct the hearing within
9 thirty days of the request for arbitration. The arbitrator may
10 impose any penalty the secretary of state is authorized to
11 impose. The arbitrator shall state the reasons for ~~[his]~~ the
12 arbitrator's decision in a written document that shall be a
13 public record. The decision shall be final and binding. The
14 decision shall be issued and filed with the secretary of state
15 within thirty days of the conclusion of the hearing. Unless
16 otherwise provided for in this section or by rule ~~[or~~
17 ~~regulation]~~ adopted by the secretary of state, the procedures
18 for the arbitration shall be governed by the Uniform
19 Arbitration Act. No arbitrator shall be subject to liability
20 for actions taken pursuant to this section.

21 G. The secretary of state may refer a matter to the
22 attorney general or a district attorney for a civil injunctive
23 or other appropriate order or for criminal enforcement."

24 Section 8. Section 1-19-35 NMSA 1978 (being Laws 1979,
25 Chapter 360, Section 11, as amended by Laws 1997, Chapter 12,
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1 Section 2 and also by Laws 1997, Chapter 112, Section 5) is
2 amended to read:

3 "1-19-35. REPORTS [~~AND STATEMENTS~~]~~--LATE FILING PENALTY--~~
4 FAILURE TO FILE.--

5 A. Except for the [~~report~~] reports required to be
6 filed and delivered the Thursday prior to the election and any
7 supplemental report, as required in Paragraph (2) of Subsection
8 B of Section 1-19-29 NMSA 1978, that is due prior to the
9 election, and subject to the provisions of Section 1-19-34.4
10 NMSA 1978, if a [~~statement of exception or a~~] report of
11 expenditures and contributions contains false or incomplete
12 information or is filed after any deadline imposed by the
13 Campaign Reporting Act, the responsible reporting individual or
14 political committee, in addition to any other penalties or
15 remedies prescribed by the Election Code, shall be liable for
16 and shall pay to the secretary of state fifty dollars (\$50.00)
17 per day for each regular working day after the time required by
18 the Campaign Reporting Act for the filing of [~~statements of~~
19 ~~exception or~~] reports of expenditures and contributions until
20 the complete [~~or~~] and true [~~statement or~~] report is filed, up
21 to a maximum of five thousand dollars (\$5,000).

22 B. If any reporting individual files a false,
23 intentionally incomplete or late report of expenditures and
24 contributions due on the Thursday prior to the election, the
25 reporting individual or political committee shall be liable and

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1 pay to the secretary of state five hundred dollars (\$500) for
2 the first working day and fifty dollars (\$50.00) for each
3 subsequent working day after the time required for the filing
4 of the report until the true and complete report is filed, up
5 to a maximum of five thousand dollars (\$5,000).

6 C. If a reporting individual fails to file or files
7 a late supplemental report of expenditures and contributions as
8 required in Paragraph (2) of Subsection B of Section 1-19-29
9 NMSA 1978, the reporting individual or political committee
10 shall be liable for and pay to the secretary of state a penalty
11 equal to the amount of each contribution received or pledged
12 after the Tuesday before the election that was not timely
13 filed.

14 D. All sums collected for the penalty shall be
15 deposited in the state general fund. A report [~~or statement of~~
16 ~~exception~~] shall be deemed timely filed only if it is received
17 by the proper filing officer by the date and time prescribed by
18 law.

19 E. Any candidate who fails or refuses to file a
20 report of expenditures and contributions [~~or statement of~~
21 ~~exception~~] or to pay a penalty imposed by the secretary of
22 state as required by the Campaign Reporting Act shall not, in
23 addition to any other penalties provided by law:

24 (1) have [~~his~~] the candidate's name printed
25 upon the ballot if the violation occurs before and through the

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1 final date for the withdrawal of candidates; or

2 (2) be issued a certificate of nomination or
3 election, if the violation occurs after the final date for
4 withdrawal of candidates or after the election, until the
5 candidate satisfies all reporting requirements of the Campaign
6 Reporting Act and pays all penalties owed.

7 F. Any candidate who loses an election and who
8 failed or refused to file a report of expenditures and
9 contributions [~~or a statement of exception~~] or to pay a penalty
10 imposed by the secretary of state as required by the Campaign
11 Reporting Act shall not be, in addition to any other penalties
12 provided by law, permitted to file a declaration of candidacy
13 or nominating petition for any future election until the
14 candidate satisfies all reporting requirements of that act and
15 pays all penalties owed."

16 Section 9. REPEAL.--Section 1-19-33 NMSA 1978 (being Laws
17 1979, Chapter 360, Section 9 as amended) is repealed.

18 Section 10. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2007.